

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U-338-E) for Authorization: (1) to Replace San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) Steam Generators; (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues.

Application 04-02-026  
(Filed February 27, 2004)

**ADMINISTRATIVE LAW JUDGE'S RULING  
REGARDING MOTION FOR PROTECTIVE ORDER**

Concurrent with the filing of this application, Southern California Edison Company (SCE) filed a motion for a protective order setting the conditions under which parties may obtain access to certain documents. The documents or categories of documents SCE seeks protection of include:

1. Resource and procurement plans, including the redacted portions of Exhibits SCE-1 and SCE-4,
2. Benchmarking reports, and
3. Computer models.

**Resource and Procurement Plans**

The motion for a protective order, as it relates to SCE's resource and procurement plans, including the redacted portions of Exhibits SCE-1 and SCE-4, will be addressed at a later date.

### **Benchmarking Reports**

SCE's benchmarking reports reveal its business practices and standards and contain assessments of vendors' strengths and weaknesses, particularly with respect to large-scale projects such as replacing the steam generators. SCE alleges that making this information public would put it at a disadvantage in negotiating with vendors to do the work.

Public release of SCE's benchmark reports could lead to higher project costs and, therefore, would not be in the best interests of ratepayers. Consequently, they will be granted confidential treatment.

### **Computer Models**

SCE used MarketSym and RiskSym models, owned by Henwood Energy Services, Inc. (Henwood), in this proceeding to complete its benefit-to-cost analysis. The Henwood computer models were used by SCE subject to a licensing agreement. Consequently, SCE argues that competitors and other market participants should not have access to the models because it would violate the licensing agreement.

SCE also states that when developing the Henwood models for its use, it provided proprietary and confidential information to Henwood concerning its specific data input needs. As a result, SCE's Henwood models reveal confidential insights into how SCE forecasts its resource needs and performs benefit-to-cost analysis. SCE argues that disclosure of such information will put it at a competitive disadvantage regarding existing and future resource procurement and management transactions.

SCE used General Electric Company's (GE) Positive Sequence Load Flow computer software to model its transmission system. SCE says that the model is proprietary software owned by GE and licensed to SCE. Therefore, SCE says

that parties should not have access the model for the same reasons access to the Henwood models should be limited.

Pursuant to a contract between SCE and Dominion Engineering, Inc. (DEI), DEI used a computer model to complete a statistical analysis of steam generator tube degradation. The model is exclusively licensed by DEI. SCE claims that giving parties access to the model would violate DEI's licensing agreement.

SCE asserts that the parties should not have access to the Henwood, GE, and DEI models including the models' data bases, software, algorithms, and documentation such as manuals, guides, training materials, or other materials used in conjunction with the models. SCE also proposes to perform model runs requested by the parties.

Rule 74.3 of the Commission's Rules of Practice and Procedure provides that any party who submits testimony or exhibits in a proceeding that are based in whole or in part on a computer model (sponsoring party) shall provide all parties with: (1) a complete set of input data including a description of its source, (2) documentation sufficient to understand the basic logical processes of the model, (3) a complete set of output files, and (4) a description of the post-processing requirements of the model.<sup>1</sup>

Rule 74.4 provides that the sponsoring party shall provide reasonable access to, and an explanation of, the model. The sponsoring party is also required to make the model available to other parties, or to provide requested model runs to other parties.

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<sup>1</sup> Rules 74.1 through 74.7 implement Pub. Util. Code §§ 1821-1822.

Rule 74.7 provides that the sponsoring party may file a motion for a protective order to protect material that is confidential, proprietary, or subject to a licensing agreement.

As discussed above, the materials related to the Henwood, GE, and DEI models appear to be proprietary trade secret information that is not publicly available, and the release of which would violate licensing agreements. However, parties should have access to the information specified in Rule 74.3 regarding the Henwood, GE, and DEI models. Therefore, I require SCE to, upon request, provide the information required by Rule 74.3 to the parties subject to the protective order adopted herein. SCE's proposal to perform model runs requested by the parties, rather than allowing the parties access to the models, is consistent with Rule 74.4.

For the above reasons, I grant the Motion for a Protective Order as discussed above. The Commission's staff is not subject to the protective order.<sup>2</sup>

Attached to this Ruling are (a) a Protective Order and (b) a Non-Disclosure Certificate. I also require SCE to maintain a list of all Reviewing Representatives, as defined in the Protective Order, and make that listing available on an updated basis to the Office of Ratepayer Advocates and all Reviewing Representatives.

Therefore, **IT IS RULED** that:

1. The motion of Southern California Edison Company (SCE) for a Protective Order and related Non-disclosure Certificate is granted to the extent set forth below. In all other respects, it is denied.

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<sup>2</sup> Access to these materials by the Commission staff, including the Office of Ratepayer Advocates, is governed by Pub. Util. Code § 583 and General Order 66-C.

2. SCE shall provide to parties, upon request, information specified in Rule 74.3 regarding the Henwood, GE, and DEI models.

3. Pursuant to Rule 74.4, SCE shall perform runs of the above models reasonably requested by the parties.

4. The attached Protective Order is adopted, and applies to SCE's benchmarking studies, and the Henwood, GE, and DEI models.

5. The protective order is binding on all parties to this proceeding, except the Office of Ratepayer Advocates.

6. SCE's motion for a protective order, as it applies to the redacted portions of Exhibits SCE-1 and SCE-4, and materials related to SCE's resource and procurement plans will be addressed at a later date.

Dated May 21, 2004, at San Francisco, California.

/s/ JEFFREY P. O'DONNELL

Jeffrey P. O'Donnell  
Administrative Law Judge

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Application of Southern California Edison Company (U-338-E) for Authorization: (1) to Replace San Onofre Nuclear Generating Station Unit Nos. 2 & 3 (SONGS 2 & 3) Steam Generators; (2) Establish Ratemaking for Cost Recovery; and (3) Address Other Related Steam Generator Replacement Issues.

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**PROTECTIVE ORDER**

1. This Protective Order shall govern access to the Protected Materials identified in the Administrative Law Judge's Ruling adopting this order, or as subsequently designated by the California Public Utilities Commission (Commission), the Assigned Commissioner, the Assigned Administrative Law Judge (ALJ), or the Law and Motion ALJ. This Protective Order is not applicable to the furnishing of information by Southern California Edison Company (SCE) to the Commission or its staff (including the Office of Ratepayer Advocates), nor shall it be construed in such a manner as to limit or restrict such furnishing of information.<sup>1</sup> Notwithstanding any order terminating this proceeding, this Protective Order shall remain in effect until specifically modified or terminated by the Assigned Commissioner, the Assigned ALJ, the Law and Motion ALJ, or the Commission.

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<sup>1</sup> Pub. Util. Code § 583 and General Order 66-C are applicable to Commission staff review of protected materials.

2. Definitions - for purposes of this Order:

- (a) The term "Participant" shall mean a person or entity that has entered an appearance as a party in this proceeding.
- (b) The term "Non-Disclosure Certificate" shall mean the certificate annexed hereto by which Participants' Reviewing Representatives, as defined in section 2(c), who have been granted access to Protected Materials shall certify their understanding that such access to Protected Materials is provided pursuant to the terms and restrictions of this Protective Order, and that they have read the Protective Order and agree to be bound by it.
- (c) The term "Reviewing Representative" shall mean a person who has signed a Non-Disclosure Certificate, and who is:
  - (1) a Participant;
  - (2) an employee or other representative of a Participant with responsibility for this proceeding.
  - (3) an expert or an employee of an expert retained by a Participant for the purpose of participating in this proceeding; or
  - (4) a person designated as a Reviewing Representative by order of the Commission, the Assigned Commissioner, or the Assigned ALJ.

Participants are responsible for the actions of their Reviewing Representatives involving Protected Materials.

Notwithstanding section 2(c)(1-4) above, SCE has the right to refuse to provide a Reviewing Representative access to Protected Materials if grounds exist such that the Participant or the Reviewing Representative could use Protective Materials for commercial or improper usage. If a Participant disagrees with SCE's refusal to provide Protected Materials, the Participant may seek resolution under the procedures set forth in section 9(a).

3. Protected Materials shall be made available under the terms of the Protective Order only to Participants, and only through their Reviewing Representatives. SCE

shall maintain an updated list of Reviewing Representatives that shall be made available upon request to the Office of Ratepayer Advocates, Participants, and all Reviewing Representatives.

4. (a) Protected Materials shall remain available to Participants until the date that an order terminating or concluding this proceeding becomes no longer subject to judicial review.

(b) Within 30 calendar days of the date set forth in section 4(a), all Participants' Reviewing Representatives shall return to SCE all Protected Materials, including notes of Protected Materials and those pages of filings, official transcripts and exhibits in this proceeding that contain Protected Materials. In the alternative and with SCE's consent, Participants may destroy the Protected Materials in a manner determined by SCE. Within such time period, each Participant shall also submit to SCE an affidavit stating that, to the best of its knowledge, all Protected Materials and documents containing Protected Materials have been returned to SCE or have been destroyed.

5. All Protected Materials shall be maintained in a secure place so that access is limited to Reviewing Representatives.

6. (a) Protected Materials shall be treated as confidential by each Participant and by its Reviewing Representatives in accordance with the certificate executed pursuant to section 7. Protected Materials shall not be used except as necessary for the conduct of this proceeding, nor shall they be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding, and who needs to know the information in order to carry out that person's responsibilities in this proceeding.

(b) Reviewing Representatives may make notes of Protected Materials that shall be treated as Protected Materials if the notes disclose the contents of Protected Materials. Reviewing Representatives may not make copies of Protected Materials unless agreed to by SCE. Any such copies become Protected Materials.



7. A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Protected Materials pursuant to this Protective Order unless the Reviewing Representative has first executed a Non-Disclosure Certificate. The original of each Non-Disclosure Certificate shall be provided to SCE prior to disclosure of any Protected Materials to that Reviewing Representative. Each reviewing representative shall retain a copy of the Non-Disclosure Certificate.

8. In the event that any Reviewing Representative to whom Protected Materials are disclosed ceases to be engaged in these proceedings, and no longer meets the definition of Reviewing Representative under section 2(c), that person's access to Protected Materials shall be terminated. Even if no longer engaged in this proceeding, every person who has executed a Non-Disclosure Certificate shall continue to be bound by the provisions of this Protective Order and the Non-Disclosure Certificate.

9. (a) Subject to section 13, the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ, as appropriate, shall resolve any disputes arising under this Protective Order. Prior to presenting any dispute under this Protective Order to the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ under Resolution ALJ-164 or the Commission's Rules of Practice and Procedure, the parties to the dispute shall meet and confer and use their best efforts to resolve the dispute.

(b) Any Participant who contests the designation of materials as protected shall notify SCE by specifying in writing the materials whose designation is contested. This Protective Order shall continue to apply to such materials after the notification is made. The Participant may seek resolution of the dispute under the procedures set forth in section 9(a). SCE shall have the burden of proving that the materials should be protected. If the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ finds that the materials at issue are not entitled to protection, the procedures of section 13 shall apply.

10. All copies of all documents reflecting Protected Materials that are filed with the Commission, or provided to the Commission, parties, Commission staff, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ, including the portion of the hearing testimony, exhibits, transcripts, briefs and other documents which refer to Protected Materials, shall be in sealed envelopes or other appropriate containers endorsed to indicate that they are sealed pursuant to this Protective Order, and marked "PROTECTED MATERIALS."

If any Participant desires to include, utilize or refer to any Protected Materials or information derived therefrom in testimony or exhibits during the hearings in this proceeding, such Participant shall first notify counsel for SCE, the Assigned Commissioner, and the Assigned ALJ of such desire, identifying with particularity each of the Protected Materials. Thereafter, use of such Protected Materials will be governed by procedures determined by the Assigned Commissioner or the Assigned ALJ.

11. Nothing in this Protective Order shall be construed as precluding SCE from objecting to the use of Protected Materials on any legal grounds.

12. Nothing in this Protective Order shall preclude any Participant from requesting the Commission, Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ to find that this Protective Order should not apply to all or any materials previously designated as Protected Materials pursuant to this Protective Order.

13. If the Commission, the Assigned Commissioner, the Assigned ALJ, or the Law and Motion ALJ rules at any time in the course of this proceeding that all or part of the Protected Materials need not be protected, those materials shall, nevertheless, be subject to the protection afforded by this Protective Order for seven (7) business days from the date of the ruling. If, within such period, a party files a rehearing request or an interlocutory appeal on that ruling with the Commission, the materials shall remain protected until seven (7) business days after the final order resolving the question of confidentiality.

14. Contents of Protected Materials or any other form of information that copies, excerpts or summarizes Protected Materials shall not be disclosed to anyone other than in accordance with this Protective Order, and shall be used only in connection with this proceeding. Any violation of this Protective Order and any Non-Disclosure Certificate executed hereunder shall constitute a violation of an order of the Commission.

/s/ JEFFREY P. O'DONNELL  
Jeffrey P. O'Donnell  
Administrative Law Judge

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**NON-DISCLOSURE CERTIFICATE**

**(To be executed by a Reviewing Representative for access to Protected Materials)**

I hereby certify my understanding that access to Protected Materials is provided to me pursuant to the terms and restrictions of the Protective Order issued on May 21, 2004, in this proceeding, that I have been given a copy of and have read the Protective Order, and that I agree to be bound by it. I understand that the contents of the Protected Materials, any notes or other memoranda, or any other form of information that copies or discloses Protected Materials shall not be disclosed to anyone other than in accordance with the Protective Order. I acknowledge that a violation of this certificate constitutes a violation of an order of the California Public Utilities Commission.

Signature:
Printed Name
Title:
Representing:
Telephone
E-mail

Date:

**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Regarding Motion for Protective Order on all parties of record in this proceeding or their attorneys of record.

Dated May 21, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.